

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

LINDA MIGLIORI, <i>et al.</i> , Plaintiffs,	:	
v.	:	No. 5:22-cv-00397
LEHIGH COUNTY BOARD OF ELECTIONS <i>et al.</i> , Defendants.	:	

ORDER

AND NOW, this 10th day of June, 2022, upon consideration of the Order of the Third Circuit Court of Appeals in Appeal Number 22-1499, in which the Third Circuit reversed this Court's March 16, 2022 order entering judgment in Defendants' favor to the extent this Court determined that Plaintiffs lacked the capacity to bring suit and directed that this Court enter an Order, forthwith, directing that the undated ballots at issue in this matter be counted, and considering that the time for rehearing of that decision having passed, *see* attached Order, and the Supreme Court having denied David Ritter's Application for Stay of the Third Circuit's Order, *see Ritter v. Migliori*, No. 21A772, 596 U.S. __ (June 9, 2022),¹ **IT IS HEREBY ORDERED THAT:**

1. Defendant Lehigh County Board of Elections **SHALL** count the undated ballots at issue in this matter.
2. The Court's Order dated March 16, 2022, ECF No. 50, is **VACATED**.
3. Judgment is **ENTERED** in favor of Plaintiffs and against Defendants.
4. This matter remains **CLOSED**.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.
JOSEPH F. LEESON, JR.
United States District Judge

¹ The Order vacated an emergency stay entered on May 31, 2022 by Justice Samuel A. Alito, Jr.. Justices Alito, Thomas, and Gorsuch dissented from the denial of the stay.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-1499

MS. LINDA MIGLIORI; FRANCIS J. FOX; RICHARD E. RICHARDS; KENNETH
RINGER; SERGIO RIVAS,
Appellants

v.

ZACHARY COHEN,
Intervenor – Plaintiff

v.

LEHIGH COUNTY BOARD OF ELECTIONS

v.

DAVID RITTER,
Intervenor - Defendant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
No. 5-22-cv-00397
District Judge: Honorable Joseph F. Leeson

Argued: May 18, 2022

Before: McKEE, GREENAWAY JR., and MATEY, *Circuit Judges.*

AMENDED JUDGMENT

This judgment is issued at the direction of the Court pursuant to Fed. R. App. P. 36(a)(2).

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was argued on May 18, 2022.

On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the judgment of the District Court entered on March 16, 2022, is reversed insofar as it found Appellants lack the capacity to bring suit under 52 U.S.C. § 10101 as there exists a private right of action under 42 U.S.C. § 1983. *See Gonzaga Univ. v. Doe*, 536 U.S. 273, 284–85 (2002).

In addition, inasmuch as there is no dispute that ballots that have the wrong date were counted in the election, it is further ORDERED and ADJUDGED that, the dating provisions contained in 25 Pa. Cons. Stat. §§ 3146.6(a) and 3150.16(a) are immaterial under § 10101(a)(2)(B). Accordingly, because it is undisputed that all the undated ballots that have been set aside in the November 2, 2021 election for Judge of the Common Pleas of Lehigh County were received by the deadline, there is no basis on this record to refuse to count them.

This matter is hereby remanded to the District Court and that court is hereby directed to forthwith enter an order that the undated ballots be counted.

A formal opinion will follow. The mandate will issue immediately upon filing of the opinion. The time for filing a petition for rehearing will be five (5) days from the date that the Court's opinion is entered on the docket.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: May 23, 2022